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### **In this chapter . . .**

This chapter provides an overview of the benchbook. It also includes the definition of adoption, the purposes of the Adoption Code, and a list of factors used to determine the best interests of a child in adoption proceedings.

## **1.1 Summary of Benchbook Contents**

### **Freeing a Child for Adoption — Chapters 2–3**

The first step in the adoption process is ensuring the child is freed for adoption. Freeing a child for adoption is a complex process that depends upon numerous factors within each case. Chapter 2 contains discussion of how an adoptee may be released for adoption, how consent to adoption occurs, and how to terminate parental rights in order to free a child for adoption.

In freeing a child for adoption, one of the first matters to be determined is the identity of the child’s father or determining that he cannot be identified. The father may be a biological, legal, or putative father. There may be more than one putative father. It is important to establish the type of father early in the proceedings because the type of father dictates which procedures the court must follow in order to proceed with an adoption. Chapter 3 discusses the procedures that may be utilized to identify and establish a father under the Adoption Code and related court rules. Chapter 3 also provides an overview of establishing paternity through the Acknowledgment of Parentage Act, the Paternity Act, the Uniform Interstate Family Support Act, and the court rules governing child protective proceedings. Although these acts and court rules are not a part of the Adoption Code, they are included in the benchbook in an effort to help the courts identify the legal father to a child.

### **Jurisdiction, Venue, and Petition Requirements — Chapter 4**

Chapter 4 discusses jurisdiction and venue in adoption proceedings. A discussion of the requirements for an adoption petition, including notice, service, and the responsibilities of a lawyer-guardian ad litem, is also included in this chapter.

## **Temporary and Formal Placement for Adoption — Chapters 5–6**

A temporary placement occurs before the court formally approves the child's placement for adoption. A formal placement is approved by the court pursuant to MCL 710.51. Chapters 5 and 6 discuss both the temporary and formal placement of a child for adoption. The procedural and investigative requirements before and after a placement are discussed. These chapters also contain discussion of state and federal laws that limit with whom a child may be placed and the factors the court may consider when placing a child for adoption.

After a final order of adoption has been entered, the adoptive parents and the adoptee have new legal rights and obligations. The new legal rights and obligations of the parties are discussed in Section 6.6.

## **Post-Adoption Issues — Chapter 7**

After an adoption is ordered, a variety of issues may arise. Chapter 7 details the statutes, court rules, and case law that govern motions for rehearing, appeals, rescissions and dissolution of adoptions.

## **Direct Placement Adoption, Step-Parent Adoption, Relative Adoption, and “Legal Risk” Placement — Chapter 8**

Chapter 8 discusses the specific requirements for direct placement adoptions, step-parent adoptions, relative adoptions, and legal risk placements. All four categories have the same requirements as any other adoption, with the exception of the information indicated in Chapter 8. Chapter 8 is intended to supplement the information provided in other chapters. Appropriate cross-references are provided.

Although step-parent adoption is discussed in Chapter 8, a discussion of terminating parental rights pursuant to a step-parent adoption is not discussed. Information regarding termination of parental rights pursuant to a step-parent adoption can be found in Section 2.13.

Adoption attorneys and adoption facilitators are discussed in detail, including the requirements and responsibilities of both.

## **Record Keeping Requirements and Release of Information — Chapter 9**

Chapter 9 discusses the restrictions on access to records of adoption proceedings. It also contains discussion of the procedures required for the release of information identifying a former parent, adoptee, or adoptee's sibling. Confidential intermediaries may be utilized to determine the location of former family members, adult adoptees, or adult children of deceased adult adoptees. Section 9.7 provides the qualifications, responsibilities, and compensation of a confidential intermediary.

## Paying the Costs of Foster Care and Adoption — Chapter 10

Chapter 10 discusses the money issues involved in an adoption, including adoption services for which compensation *must* be paid, adoption services for which compensation *may* be paid, and adoption services for which compensation *may not* be paid without court approval. In order to ensure that all of the people and agencies involved in an adoption proceeding receive only the consideration that they are entitled to, the parties are required to file paperwork with the court. Section 10.3 discusses the accounting and reporting requirements.

In order to effectuate the adoption of children with special needs, adoption subsidies are available. Section 10.5 discusses adoption subsidies including the requirements to obtain a subsidy and how subsidy determinations are made. This section does not include a discussion of how to appeal a subsidy determination. For information on appealing a subsidy determination see Section 7.3(B).

## Indian Child Welfare Act — Chapter 11

When an “Indian child” is the subject of an adoption, the court must follow the mandates of the Indian Child Welfare Act (ICWA). Chapter 11 details the substantive and procedural mandates of ICWA.

### 1.2 Adoption Defined

Adoption is the act that legally establishes relations of paternity and affiliation by people who are not related by nature. *Morrison v Sessions Estate*, 70 Mich 297, 305 (1888). Adoption has also been referred to as the “legal equivalent of biological parenthood.” *Smith v Offer*, 431 US 816, 844 n51(1977).

In Michigan, adoption was created purely by statute and did not exist in the common law. See *Slattery v Hartford-Connecticut Trust Co.*, 254 Mich 671, 675 (1931); *Brown v Blesch*, 270 Mich 576, 579 (1935); *In re White’s Adoption*, 300 Mich 378, 382 (1942); *In re Ives*, 314 Mich 690, 697(1946).

In *In re Hill*, 221 Mich App 683, 689 (1997) the Court of Appeals stated:

“The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. Statutory language should be construed reasonably, keeping in mind the purpose of the act. Because the Adoption Code is in derogation of the common law, its provisions must be strictly construed. *In re Schnell*, 214 Mich App 304, 309-10; 543 NW2d 11 (1995).”

Substantial compliance with the adoption statutes is required since adoption was statutorily created. *Roberts v Sutton*, 317 Mich 458, 468 (1947) and *In re Bell’s Estate*, 310 Mich 394, 398 (1945).

## 1.3 Purposes of the Adoption Code

The general purposes of the Adoption Code are found in MCL 710.21a. Those purposes are:

“(a) To provide that each adoptee in this state who needs adoption services receives those services.

“(b) To provide procedures and services which will safeguard and promote the best interests of each adoptee in need of adoption and which will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount.

“(c) To provide prompt legal proceedings to assure that the adoptee is free for adoptive placement at the earliest possible time.”

## 1.4 Best Interests of the Child or Adoptee

MCL 710.21a(b) provides that one of the purposes of the Adoption Code is “[t]o provide procedures and services which will safeguard and promote the best interests of each adoptee in need of adoption and which will protect the rights of all parties concerned. If conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee shall be paramount.”

The Adoption Code defines the “best interests of the adoptee” as follows:

“‘Best interests of the adoptee’ or ‘best interests of the child’ means the sum total of the following factors to be considered, evaluated, and determined by the court to be applied to give the adoptee permanence at the earliest possible date:

“(i) The love, affection, and other emotional ties existing between the adopting individual or individuals and the adoptee or, in the case of a hearing under section 39\* of this chapter, the putative father and the adoptee.

“(ii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, the putative father to give the adoptee love, affection, and guidance, and to educate and create a milieu that fosters the religion, racial identity, and culture of the adoptee.

“(iii) The capacity and disposition of the adopting individual or individuals or, in the case of a hearing under

\*MCL 710.39 governs hearings for termination of a putative father’s rights. See Section 2.12 for information on MCL 710.39.

section 39 of this chapter, the putative father, to provide the adoptee with food, clothing, education, permanence, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

“(iv) The length of time the adoptee has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

“(v) The permanence as a family unit of the proposed adoptive home, or, in the case of a hearing under section 39 of this chapter, the home of the putative father.

“(vi) The moral fitness of the adopting individual or individuals, or in the case of a hearing under section 39 of this chapter, of the putative father.

“(vii) The mental and physical health of the adopting individual or individuals or, in the case of a hearing under section 39 of this chapter, of the putative father, and of the adoptee.

“(viii) The home, school, and community record of the adoptee.

“(ix) The reasonable preference of the adoptee, if the adoptee is 14 years of age or less and if the court considers the adoptee to be of sufficient age to express a preference.\*

“(x) The ability and willingness of the adopting individual or individuals to adopt the adoptee’s siblings.

“(xi) Any other factor considered by the court to be relevant to a particular adoption proceeding, or to a putative father’s request for child custody.” MCL 710.22(f).

\*If the adoptee is over 14 years of age, the adoptee must consent to the adoption. MCL 710.43(2). See Section 2.6(A)(3).

## 1.5 Docket Priority

One of the purposes of the Adoption Code is to provide prompt legal proceedings to assure that the adoptee is free for adoption at the earliest possible time. MCL 710.21a(c). In order to ensure prompt legal proceedings, the Adoption Code also provides the following:

“(1) All proceedings under this chapter shall be considered to have the highest priority and shall be advanced on the court docket so as to provide for their earliest practicable disposition.

“(2) An adjournment or continuance of a proceeding under this chapter shall not be granted without a showing of good cause.”

MCL 710.25.